

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

GEORGIA SOUTHWESTERN RAILROAD, INC., a Corporation,)
vs.)
AMERICUS C. MITCHELL, JR., an Individual,)
Defendant.)

Plaintiff,)
CASE NO. 2:06cv3-B

AFFIDAVIT OF AMERICUS C. MITCHELL, JR.

My name is **AMERICUS C. MITCHELL, JR.** I have personal knowledge of the facts set forth herein and I am authorized to execute this affidavit.

1. I am a property owner in Barbour County, Alabama, upon which there is a railroad easement that is part of the White Oak Spur which is operated by the Georgia Southwestern Railroad, Inc. of Dawson, Georgia.
2. At the end of my property line, at Mile Post 338.9 of the White Oak Spur, rests the railroad trestle made the basis of this suit.
3. Since the Louisiana Pacific Plant, for whom Georgia Southwestern Railroad regularly hauled freight, ceased its operations, I have personally observed that there have been fewer maintenance activities conducted on the White Oak Spur, to include the subject trestle, than there were while the Louisiana Pacific Plant was still in operation.
4. Specifically, this lack of maintenance has led to the prolific growth of various vegetative vines, especially kudzu, from the ground along the support members of and onto the track portion of the trestle itself.

5. After the first freeze following the summer months, this vegetative material dies, in itself, creating a fire hazard.

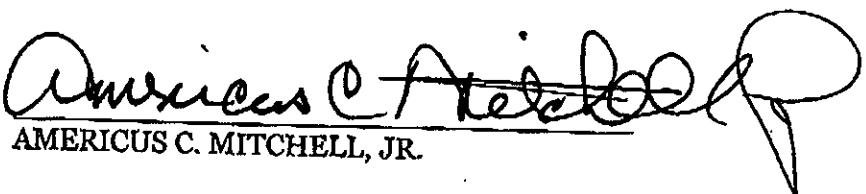
6. A great deal of this vegetative material emanating from the railroad right-of-way was allowed to encroach onto my property as well.

7. Despite my utilizing plowed fire lanes and setting a small controlled burn, this abundance of dead vegetative material did catch fire, which, in turn, led to the fire involving the subject trestle.

8. Had the right-of-way been properly maintained and kept free of combustible and incendiary materials, this fire would have never left the boundaries of my property.

9. I have conducted controlled burns of the same portion of my property for more than 40 years, and have never experienced problems of this nature.

Further, affiant saith not.



Americus C. Mitchell, Jr.
AMERICUS C. MITCHELL, JR.

STATE OF ALABAMA
COUNTY OF BARBOUR

BEFORE ME, the undersigned authority, a Notary Public in and for the said State and County, personally appeared **AMERICUS C. MITCHELL, JR.**, who, after being duly sworn, deposes and says on oath that he executed the foregoing Affidavit and acknowledged that the same is true; and that after reading the same, or having the same read to him, and with a full understanding of the terms and effect thereof, he executed the same as his free act and deed and for the uses and purposes therein expressed.

SWORN TO AND SUBSCRIBED BEFORE ME, this the 17th day of September, 2006.

(SEAL)

Catherine C. Mote
NOTARY PUBLIC
My commission expires: 2-8-08